

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 17.05.2017

Coram:-

The Honourable Mr. Justice M.M.SUNDRESH
and
The Honourable Mr. Justice R.SUBRAMANIAN

Habeas Corpus Petition No.2715 of 2016

Thara BegumPetitioner/Mother of detenue
Vs.

- 1.The State of Tamil Nadu, Rep., by its
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistratem
Kancheepuram District, Kancheepuram. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the entire records relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 07.11.2016 on the file of the second respondent herein made in proceedings BCDGFISSSV No.65/2016 and quash the same as illegal and consequently, direct the respondents herein to produce the said petitioner's son namely Ussenbasha, son of Kaja Sherif aged 25 years before this Court and set the petitioner's son at liberty from detention, now detained at Central Prison, Puzhal, Chennai.

For Petitioner : Mr.C.C.Chellappan

For Respondents : Mr.E.Raja,
Additional Public Prosecutor

ORDER
(Order of the Court was made by M.M.SUNDRESH, J.)

Seeking to quash the detention order dated 07.11.2016, the petitioner, who is the mother of the detenu, has come forward to file this Habeas Corpus Petition.

2. We have heard the learned Counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents and we have also perused the records carefully.

3. The learned counsel appearing for the petitioner has made only one submission. It is submitted that in a ground case in Crime No.640/2016, the detenu was involved in the offences punishable under Section 341, 294(b), 397, 307 and 506 (ii) IPC. However, in the similar case relied upon by the detaining authority, bail was granted in Crl.M.P.No.1602 of 2016 on 21.07.2016 in Crime No.252 of 2016 under Section 341, 294(b), 324, 307 and 506(ii). Thus, there is no offence involved under Section 397 IPC in the similar case.

4. The learned Additional Public Prosecutor submits that the punishment for the offence under Section 397 IPC is life imprisonment and that being the higher punishment, there is no bar in relying upon the order passed in Crime No.1602/2016.

5. We are not inclined to agree with the said submission made by the learned Additional Public Prosecutor. The detaining authority proceeds to pass a detention order on the factual premise that the offences are similar along with the facts. Admittedly, the facts are not similar and so is the case of the offence. There is no alleged offence under Section 397 IPC involved in Crl.M.P.No.1602 of 2016, in which, bail was granted to the detenu on 21.07.2016. In such view of the matter, the detention order involves non application of mind and hence, we are inclined to quash the impugned order of detention.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order in BCDFGISSSV No.65/2016, dated 07.11.2016 passed by the second respondent is quashed. The detenu, viz., Ussenbasha, is directed to be released forthwith, unless his presence is required in connection with any other case.

Sd/-

Asst.Registrar (CO)

/true copy/ सत्यमेव जयते

Sub Asst. Registrar

raa

To

1. The Secretary to the Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Chennai-600 009.

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2. The District Collector and District Magistrate
Kancheepuram District, Kancheepuram.
3. The Superintendent, Central Prison, Puzhal, Chennai.
(In duplicate for communication to the petitioner)
4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.
5. The Additional Public Prosecutor, High Court, Madras.

HCP. No.2715 of 2016

CA (CO)
NR 20/07/2017



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